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Supreme Court of the United States

OCTOBER TERM, 1955

No. 329

[illegible]

Appellant,

vs.

STATE OF LOUISIANA,

Appellee.

Appeal From the Supreme Court of the State of Louisiana.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANT.

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IN THE

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No. _____

CHARLES FORD,

Appellant,

versus

STATE OF LOUISIANA,

Appellee.

Appeal from the Supreme Court of the State of Louisiana.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANT.

STATEMENT AS TO JURISDICTION

Appellant appeals from the Judgment of the Supreme Court of the State of Louisiana entered on December 16, 1963, upholding a Judgment of Conviction of the Twenty-Second Judicial District Court for the Parish of St. Tammany, and submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Louisiana is not yet reported. The opinion of the Twenty-Second Judicial District Court is likewise not reported.

Copy of Opinion of Supreme Court of Louisiana is attached in Appendix A.

JURISDICTION

This was a criminal action brought against appellant, Charles Ford, under Louisiana Revised Statutes, Article 40, Sections 1032-1046. The judgment of the Supreme Court of the State of Louisiana was entered on December 16, 1963, and Notice of Appeal was filed in that Court on 27th day of April, 1964. The jurisdiction of the Supreme Court to review this decision by district appeal is conferred by Title 28, United States Code, Section 1257(2).

QUESTION PRESENTED

Where in a criminal proceeding in a State Court counsel representing accused failed or neglected to perfect Bills of Exception, which Bills of Exception, if perfected, would have resulted in a decision of the Supreme Court of the State of Louisiana, granting a new trial, resulted in a deprivation of the rights of accused, Charles Ford, as guaranteed him by the United States Constitution, Amendment No. 6, will a new trial be granted?

STATUTES INVOLVED

United States Constitution, Amendment No. 6.

STATEMENT OF THE CASE

Appellant, Charles Ford, was convicted by the Twenty-Second Judicial District Court for the Parish of St. Tammany, State of Louisiana, of the crime of "wilfully and unlawfully delivering a central nervous system stimulant, to-wit: one thousand nine hundred (1,900) tablets of amphetamines to one Claire Olsen, a person

over the age of twenty one years" in violation of Louisiana Revised Statutes, Article 40, Sections 1032-1046 and was sentenced to serve one year in the Parish Jail at St. Tammany Parish, Louisiana. This judgment was entered in the Twenty-Second Judicial District Court on February 28, 1963. A motion for new trial was overruled. During the course of the trial, counsel for appellant reserved a number of bills of exceptions but perfected none for the purposes of appeal.. Appellant then appealed from his conviction and sentence, alleging the following assignment of errors patent on the face of the record:

> "1. Four informations were filed herein under one arrest, and the State of Louisiana should have been ordered to file one information, charging by counts the alleged misdeeds of defendant.
>
> "2. Seven affidavits were filed against the defendant on October 8, 1962, the day of his arrest, and all seven counts should have been incorporated in one information; since the Statute under which defendant has been convicted carries a greater penalty for a second than a first offense, the action of the State of Louisiana has the effect of depriving defendant of due process of law guaranteed him by the Constitution of Louisiana and by Amendment Fourteen to the Constitution of the United States.
>
> "3. Particularly was it error of law not to order the charges consolidated, as it deprives defendant of his constitutional rights under both the Constitutions of Louisiana and the United States to plead former jeopardy.
>
> "4. The Court erred in not allowing the defendant opportunity to examine the deputy sheriffs on the plead of entrapment.
>
> "5. The Court erred in overruling defendant's request for special charges or proposition of law Nos. 1 through 5.

"6. (Tr. p. 28.) Counsel for appellant again asked the Court to bring all seven charges then pending against the appellant in one bill of information by counts, which was refused by the Court, and counsel objected.

"7. It is submitted that John Koch is not an expert witness. (Tr. pp. 30-37.)

"8. (Tr. pp. 46-47.) Miss Claire Olsen's testimony was objected to on the grounds that she was neither a deputy sheriff of St. Tammany nor was she with the Federal Government, Narcotics Division. Counsel for appellant objected; the Court overruled.

"9. (Tr. p. 53.) Miss Olsen identified the bottle containing the capsules marked S 2, and counsel for appellant objected, which objection was overruled. Bill reserved.

"10. At Tr. pp. 55-59, in connection with Miss Olsen's testimony, counsel for appellant-defendant was continually overruled in his efforts to show that Miss Olsen was attempting to induce the defendant to sell her a narcotic drug."

Bills of Exception were reserved to the ruling of the Court in 4 through 10 above, but the said bills were not perfected by counsel for appellant. Upon appeal to the Supreme Court of Louisiana, that court would not consider Errors Nos. 4 through 10 and cited as its authority therefor, *State v. Brown*, 236 La. 562, 108 So. 2d 233, *State v. Cooper*, 241 La. 757, 131 So. 2d 55. The Louisiana Supreme Court concluded that all proceedings appeared regular on the face of the record and as no bills of exception had been perfected there was nothing further to review, and the conviction and sentence were affirmed. Motion for rehearing was denied and now this appeal to the Supreme Court of the United States.

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are similar to those raised by *McDonald v. Hudspeth, Warden in the United States District Court, D. Kansas, First Division,* April 19, 1941, reported at 41 F. Supp. 182.

The United States Constitution, Amendment No. 6 guarantees an accused in a criminal prosecution, the assistance of Counsel for his defense.

In the *McDonald* case there was evidence to the effect that defense counsel was so intoxicated during the course of the trial as to be unable to give accused effective assistance. The Court held that accused had been deprived of his constitutional right to assistance of counsel for his defense, and ordered the release of accused. The Court said: "one accused of crime should have the effective assistance of counsel so that if innocent he will not be convicted."

In the case of *Thomas et al vs. District of Columbia,* 90 F. (2d) 424, United States Court of Appeals for the District of Columbia, decided April 19, 1937, the Court held that the appellate court would consider errors assigning abuses of judicial process even though exceptions were not taken to all of Judge's abuses. The Court said "The Sixth Amendment guaranteeing the accused in a criminal prosecution the assistance of counsel for his defense, means effective assistance."

Appellant has been deprived of his right to effective assistance of counsel in that although he was represented by counsel the failure or neglect of counsel to perfect the reserved bills of exception which failure or neglect resulted in a deprivation of appellant's rights to have his case reviewed by the Supreme Court of Louisiana and

subsequently resulted in an affirmation of accused's conviction and sentence. Had the bills of exception been properly perfected there very well could have been a reversal of the conviction.

Respectfully submitted,

ELMER R. TAPPER,
Counsel for Defendant-Appellant,
201 Trist Building,
Arabi, Louisiana.

PROOF OF SERVICE

I, Elmer R. Tapper, Attorney for Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of July, 1964, I served copies of the foregoing jurisdictional statement as follows:

To the State of Louisiana by mailing a copy to Jack P. F. Gremillion, Attorney General, State of Louisiana, State Capitol, Baton Rouge, Louisiana, and to the District Attorney of the 22nd Judicial District Court by mailing a copy to Julian J. Rodrigue, Assistant District Attorney of the 22nd Judicial District Court, St. Tammany Parish Courthouse, Covington, Louisiana, in a duly addressed envelope with first-class postage prepaid.

ELMER R. TAPPER,
Member of the Bar of the Supreme Court of the United States,
201 Tri Building,
Arabi, Louisiana.

APPENDIX

STATE OF LOUISIANA—PARISH OF ST. TAMMANY
TWENTY-SECOND JUDICIAL DISTRICT COURT
December Term, 1962

To the Honorable, the Twenty-second Judicial District Court of Louisiana, sitting in and for the Parish of St. Tammany, comes now into open Court the undersigned asst. District Attorney of the Twenty-second Judicial District of Louisiana, in the name and by the authority of said State, informs the said honorable Court:

That one CHARLES FORD
late of the Parish of St. Tammany, on the 14th day of September, in the year of our Lord, one thousand nine hundred and sixty-two, in the Parish of St. Tammany, aforesaid, and within the jurisdiction of the Twenty-second Judicial District Court of Louisiana, for the Parish of St. Tammany:

did wilfully and unlawfully deliver a central nervous system stimulant, to-wit: One Thousand Nine Hundred (1900) tablets of amphetamines to one Claire Olsen, a person over the age of twenty-one (21) years.

contrary to the form of the Statutes of the State of Louisiana in such cases made and provided, and against the peace and dignity of the same.

s/ JULIAN J. RODRIGUE
Asst. District Attorney of the
22nd Judicial District of
Louisiana

Bond is herein fixed in the sum of $_____ all conditioned as the law directs.

Covington, Louisiana _____, 1964.

_____

Judge

No. 12639

STATE OF LOUISIANA

Versus

_____

_____

_____

Information for

FILED

DEC 21, 1962

s/ EDNA D. HEINTZ

DY. CLERK

Monday Dec 16 1963

SUPREME COURT OF LOUISIANA

No. 46,715

STATE OF LOUISIANA

VS.

CHARLES FORD

On Appeal from the Twenty-Second Judicial District Court, Parish of St. Tammany, State of Louisiana. Honorable Frederick S. Ellis, Judge.

HAMLIN, Justice:

Defendant was charged by Bill of Information with wilfully and unlawfully delivering a central nervous system stimulant, to-wit: one thousand nine hundred (1,900) tablets of amphetamines to one Claire Olsen, a person over the age of twenty-one years.[1] He was tried, found guilty, and sentenced to serve one year in the parish jail.

During the course of trial, defendant reserved a number of bills of exceptions but perfected none for the purpose of appeal. He now appeals from his conviction and sentence, alleging the following assignments of errors patent on the face of the record:

"1. Four informations were filed herein under one arrest, and the State of Louisiana should have

[1] The offense charged is prohibited by the Louisiana Barbiturate and Central Nervous System Stimulant Law, Act 296 of 1952, LSA-R.S. 40:1031-46.

been ordered to file one information, charging by counts the alleged misdeeds of defendant.

"2. Seven affidavits were filed against the defendant on October 8, 1962, the day of his arrest, and all seven counts should have been incorporated in one information; since the Statute under which defendant has been convicted carries a greater penalty for a second than a first offense, the action of the State of Louisiana has the effect of depriving defendant of due process of law guaranteed him by the Constitution of Louisiana and by Amendment Fourteen to the Constitution of the United States.

"3. Particularly was it error of law not to order the charges consolidated, as it deprives defendant of his constitutional rights under both the Constitutions of Louisiana and the United States to plead former jeopardy.

"4. The Court erred in not allowing the defendant opportunity to examine the deputy sheriffs on the plead of entrapment.

"5. The Court erred in overruling defendant's request for special charges or proposition of law Nos. 1 through 5.

"6. (Tr. p. 28.) Counsel for appellant again asked the Court to bring all seven charges then pending against the appellant in one bill of information by counts, which was refused by the Court, and counsel objected.

"7. It is submitted that John Koch is not an expert witness. (Tr. pp. 30-37.)

"8. (Tr. pp. 46-47.) Miss Claire Olsen's testimony was objected to on the grounds that she was neither a deputy sheriff of St. Tammany nor was she with the Federal Government, Narcotics Division. Counsel for appellant objected; the Court overruled.

"9. (Tr. p. 53.) Miss Olsen identified the bottle containing the capsules marked S 2, and

counsel for appellant objected, which objection was overruled. Bill reserved.

"10. At Tr. pp. 55-59, in connection with Miss Olsen's testimony, counsel for appellant-defendant was continually overruled in his efforts to show that Miss Olsen was attempting to induce the defendant to sell her a narcotic drug."

The first three errors assigned are directed to the overruling of a Motion to Quash filed by defendant. It is defendant's contention that since he has been arrested only once, the four informations and seven affidavits filed against him should be consolidated into one information containing as many counts as might be required by law.

Albeit no bill of exceptions was perfected to the trial court's overruling of defendant's Motion to Quash, this Court may consider the matters urged for error patent on the face of the record. LSA-R.S. 15:503 and 560; *State v. Pridgen*, 187 La. 569, 175 So. 63; *State v. Varnado*, 208 La. 319, 23 So. 2d 106; *State v. Roth*, 224 La. 439, 69 So. 2d 741.

The indictment or the information must state every fact and circumstance necessary to constitute the offense, but it need do no more. LSA-R.S. 15:227. The district attorney shall have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is district attorney, and shall determine whom, when, and how he shall prosecute. LSA-R.S. 15:17. It is elementary that the only crimes in this state are statutory and that every fact that forms an essential element of the crime intended to be charged must be alleged with certainty and precision in the accusation, nothing being left to indendment or conjecture. *State v. Toney*, 205 La.

451, 17 So. 2d 624; *State v. Daye*, 243 La. 725, 146 So. 2d 786. Cf. *State v. Franks*, 230 La. 465, 89 So. 2d 39.

A review of the instant information discloses that the district attorney apprised the defendant of every fact that formed an essential element of the offense charged, nothing being left to inference or conjecture; he did all that he was charged by law to do. We find no authority compelling the district attorney to consolidate informations and affidavits for the convenience of a defendant.

The defendant is premature in his contention that he might be sentenced as a multiple offender. He cannot at this time assert a violation of alleged constitutional rights.

We find no error patent on the face of the record with respect to the first three errors assigned. Defendant's contentions are, therefore, without merit.

In order to determine whether error patent on the face of the record exists with respect to Errors Nos. 4 through 10, a reading of the testimony is necessary. Albeit the entire testimony taken in this prosecution is attached and incorporated in the Motion for a New Trial (which was refused), as previously stated, no bills of exceptions were perfected.

> "Counsel for appellant is apparently under the impression that we should review the evidence taken in the case which has been included in the transcript, in view of Article 557 of the Code of Criminal Procedure (R.S. 15:557) declaring in substance, that a new trial shall not be granted in any criminal case by reason of error of any matter of pleading or procedure unless it appears '* * * after an examination of the entire record, * * *' that the error complained of has probably resulted in a miscarriage of justice or constitutes a substantial violation of constitutional or statutory

rights of the accused. This, however, is a misapprehension because it assumes that the evidence in a criminal case is part of the record which it is not unless it is appended to and made part of a perfected bill of exceptions. *State v. Brown*, 236 La. 562, 108 So. 2d 233, citing *State v. Gaines*, 223 La. 711, 66 So. 2d 618 and authorities therein." *State v. Cooper*, 241 La. 757, 131 So. 2d 55.

"It is indisputable, too, that under our law the only means by which the testimony may be reviewed by this court is to have it attached to a motion for a new trial, (LSA-R.S. 15:505, 516, 520) and a bill of exceptions must be reserved to the denial of the motion for a new trial. The bill must have attached thereto the motion and evidence relied upon." *State v. Bueche*, 243 La. 160, 142 So. 2d 381.

In view of the above authorities, we are unable to consider Errors Nos. 4 through 10. *State v. Pitcher*, 236 La. 1, 106 So. 2d 695.

Out of an abundance of caution, we have read the record, which, incidentally, includes the caption, a statement of time and place of holding the court, the information with the indorsement, the arraignment, the plea of the accused, the verdict, and the judgment of the court (as set forth in *State v. Pitcher, supra*), and we find that no error exists on its face.

We conclude, therefore, that all proceedings herein appear regular and that there is no error patent on the face of the record; no bills of exceptions having been perfected, there is nothing further for our review. *State v. Bell*, 224 La. 858, 71 So. 2d 225; *State v. Scott*, 227 La. 198, 78 So. 2d 832.

The conviction and sentence are affirmed.

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